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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

C.S., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SOLANO
COUNTY,

Respondent;

SOLANO COUNTY HEALTH AND
SOCIAL SERVICES DEPARTMENT,

Real Party in Interest.

A142722

(Solano County
Super. Ct. No. J41919; J41920;
J41921; J42036; J42475)

A.M. and C.S. (individually father and mother, respectively; collectively parents), the parents of E.S.,¹ age nine; A.S., age three; J.M., age two; A.M., age one; and T.M., age six months, by separate petitions, seek to set aside the juvenile court's order setting a permanent plan hearing pursuant to Welfare and Institutions Code,² section 366.26. We have consolidated the petitions for decision. Mother contends that there is insufficient evidence to support the court's finding that return of the children to her would cause a substantial risk of detriment. She also argues that the court abused its discretion in terminating reunification services because she was not given an adequate opportunity to address the issues that led to removal of the children. Further, she asserts that the court

¹ E.S.'s alleged father is W.J. His whereabouts are unknown.

² All further statutory references are to the Welfare and Institutions Code.

erred in denying her additional reunification services and in bypassing services for T.M. Father, in turn, contends that there was insufficient evidence presented to support termination of reunification services and that reasonable services were not provided. We grant the petitions.

I. FACTUAL BACKGROUND

E.S., A.S., and J.M. (the children) came to the attention of the Solano County Department of Health and Social Services (the Department) on March 20, 2013, following a report that over a six-month period, J.M., then 13 months old, had dropped in weight from the 56th percentile to the first percentile and was not eating. The reporting party also told the Department that J.M. lacked strong motor skills. The reporting party advised mother to take J.M. to the emergency room.

A social worker for the Department investigated the matter and visited parents' home on the morning of March 21, 2013. She found that the home had dirty diapers on the floor in the living room and old food on the dining room chairs. In the kitchen, the stove had dirty pots with old food in them and the sink was full of dirty dishes. There was, however, food in the home that father advised had been purchased the prior evening. Father quickly changed the children's diapers; J.M.'s diaper was completely saturated with urine and feces. J.M. appeared pale, frail, and severely underweight. His skin was loose and his ribs were visible. He appeared lethargic and made no facial expressions. A.S. appeared healthy, but dirty as if she had not been bathed in several days.

Parents explained that J.M. was a "picky eater" and had not eaten well in recent weeks. They acknowledged that they were advised by a WIC³ staff person on March 19, 2013 to have him medically evaluated immediately but they did not know they could simply show up without an appointment. They told the social worker that they were planning to have J.M. evaluated at his next appointment in April. Parents had Medi-Cal coverage for the children, and understood they needed to follow up with J.M.'s medical

³ WIC, women, infants and children, is a federal supplemental nutrition program.

care. They, however, did not do so, despite being advised by the WIC staff person and also a public health nurse who saw J.M. on March 20, 2013.

The social worker told the parents that the children would be placed in protective custody to ensure that they were evaluated. J.M. was taken to VacaValley Hospital where he was diagnosed with “[m]alnutrition of moderate degree, starvation, [and] child neglect.” J.M. was transferred to Mercy San Juan hospital in Sacramento for evaluation and implementation of a dietary plan. J.M. was discharged on March 23, 2013 and placed with his sisters in a foster care home.

On March 25, 2013, the Department filed a section 300 petition alleging that parents had failed to protect the children in that J.M. was found to be malnourished in the parents’ home due to parents’ failure to feed him and provide him with adequate care. The petition further alleged that parents had failed to adequately care and supervise the children in that E.S. reported that she was the primary caretaker for her siblings. The petition noted that J.M. was found to be dirty with dirt or feces on his neck and legs, A.S. was wearing soiled clothing and appeared to have not bathed for a significant period of time, and E.S. had a foul odor from her mouth suggesting dental decay. The petition also alleged a count of cruelty, stating that J.M. had suffered from malnutrition and starvation for the period between August 2012 and March 21, 2013. Finally, the petition alleged that E.S. and A.S. were at substantial risk of harm due to parents’ failure to care for J.M.

The detention hearing was held on March 26, 2013. The court ordered that the children be detained and authorized supervised visitation. The court set the jurisdictional hearing for April 18, 2013.

On April 26, 2013, the court granted the Department’s request to continue the hearing pending its investigation into whether J.M. had any medical conditions which could explain his malnourishment.

The Department filed a first amended section 300 petition on May 7, 2013. The amended petition added two allegations concerning parents’ failure to protect the children. It alleged that parents used inappropriate physical discipline on the children resulting in emotional trauma to them and physical injuries to J.M. The allegations were

based on E.S.'s report that parents tied her and J.M. to a table with a belt or tape and she was forced to eat hot peppers as a form of discipline. E.S. also reported that mother would slap and shake J.M. because he got in "trouble a lot."

The Department's report for the jurisdictional hearing noted that there had been unsubstantiated allegations of physical abuse and general neglect of E.S. and A.S. in Austin, Texas, where the family lived before moving to Solano County. When the family moved to California in 2012, they initially stayed with A.M.'s sister in Sacramento before moving to Solano County.

The Department's report also stated that it was concerned about J.M.'s health, which required multiple trips to the emergency department to resolve issues with dehydration and constipation resulting from his long-term lack of nourishment, and the more recent disclosures about inappropriate discipline used by parents on the children. It recommended that the children be continued as dependents and that parents receive reunification services.

The Department filed an addendum report on June 13, 2013. It reported that it had received a new referral alleging that E.S. had been sexually abused. The report also included additional information concerning how the children were punished and about J.M.'s medical issues which included neurological problems and hematomas he may have suffered as a result of being shaken. In addition, the report stated that A.M. was born on June 3, 2013, and was detained based on the allegations concerning the siblings.

On June 14, 2014, the parents objected to jurisdiction but submitted to the allegations of the amended petition that: (1) they failed to protect J.M. in that he was found to be malnourished in their home; (2) they failed to seek medical attention for him and their failure to care for and feed J.M. placed his siblings at substantial risk of similar harm; and (3) they failed to adequately care for and supervise E.S., A. S., and J.M. in that E.S. reported that she was the primary caretaker of her siblings and the children were found to be dirty, in soiled clothing and with foul odors at the time of detention. They also submitted on the allegation that their failure to care for and feed J.M. placed his siblings at substantial risk of similar harm. The court sustained these allegations of the

amended petition, dismissed the remaining allegations, and ordered reunification services for parents.

The Department filed an interim review report on September 9, 2013. Parents were fully compliant with therapeutic visitation services, nutrition classes, individual counseling, and had completed an eight-week parenting class. The Department reported that Dr. Rachel Gilgoff from the Center for Child Protection at Children's Hospital Oakland had diagnosed J.M. with failure to thrive due to neglect, but there was no underlying medical condition for his weight loss. J.M.'s weight loss should have alerted his parents to seek medical attention. Gilgoff stated that J.M.'s MRI revealed that he had a subdural hemorrhage on the surface of the brain. She opined that the hemorrhage was caused by abusive head trauma.

The Department further reported that it had opened a child abuse investigation based on a referral that A.M. allegedly sexually abused E.S. E.S. told the emergency response social worker that A.M. had touched her in her private parts more than five times and had licked her vagina. The social worker discussed the allegations with parents who denied the incidents. Mother also denied the allegation that E.S. told her about the abuse. The Department investigated the allegations and concluded that the alleged sexual abuse was substantiated.⁴ It proposed adding an objective in the case plan to address the allegations of sexual abuse.

On September 12, 2013, the court continued the matter for a contested hearing on the interim report and denied the Department's request for discretion to return the children to the parents' care or to authorize unsupervised visitation.

The Department filed an addendum report to the special interim report on October 25, 2013 requesting that it be given discretion to move to unsupervised and overnight visitation as well as discretion to return the children to parents' care under a plan of family maintenance services. The report indicated that Dr. Gilgoff now opined that

⁴ The record indicates that the Solano County District Attorney's office elected not to charge father with any sexual molestation charges, apparently because there was an issue as to which alleged acts occurred in Vacaville or which occurred in Texas.

J.M.'s subdural hemorrhages were consistent with him being shaken. The Department also noted that parents had actively participated in all of their case plan responsibilities including therapeutic visitation and that it wanted the discretion to approve unsupervised visitation and overnight visits to assess parents' ability to safely care for the children.

On October 30, 2013, the court declined the Department's request for discretion to move to unsupervised and overnight visits for parents and ordered that the Department have discretion to authorize only monitored visits in a community setting.

The Department's report for the six-month review hearing recommended that the children remain in out-of-home placement and that family reunification services be continued. The children were adjusting well to placement, although E.S. had recently displayed aggressive behaviors in her foster care home. She was meeting with a therapist on a weekly basis who referred her for therapeutic behavioral services. A.M. and J.M. were also receiving weekly therapy. A.M.'s therapy was addressing issues with nightmares and her ability to express her feelings. J.M.'s therapy addressed attachment issues and learning to communicate his needs without resorting to crying or screaming.

Parents had actively participated in their case plans and the Department opined that they were ready to move to community visits with the children. They had made adequate progress toward mitigating the causes necessitating out-of-home placement, but had not demonstrated that they understood the impacts of sexual abuse on children nor had they shown an understanding of age-appropriate development and nutrition for the children.

On January 24, 2014, the court extended reunification services for parents and the matter was set for a 12-month review hearing.

On April 15, 2014, mother gave birth to T.M. The Department filed a section 300 petition alleging that T.M. was at risk of neglect or abuse based on the abuse or neglect of her siblings. T.M. was detained and placed in a relative placement with her paternal aunt where E.S. and A.M. had recently been moved.

The Department filed its report for the 12-month review hearing on May 21, 2014. The children were adjusting to living together in the paternal aunt's home. Parents had

made adequate progress in their reunification plan. They had been consistent in attending visits with the children and had demonstrated the new parenting skills they learned. Mother had gained an understanding about child sexual abuse and said that she would call the police if one of her children reported that he or she was sexually abused. She also said that she would take the children and leave the home if one of her children reported that father was the abuser. Father had been unable to meet with Gabriela Silva, the social worker assigned to the case, to discuss the articles he was asked to review on child sexual abuse. He missed the April meeting with Silva due to T.M.'s birth, and in May 2013 he did not attend the meeting due to his work schedule.

The Department recommended that reunification services be extended to permit parents the opportunity to transition from supervised to unsupervised visitation. The Department also wanted parents to meet with the public health nurse to learn about the impact of shaking a child and the importance of nutrition.

The contested 12-month review hearing was held on July 2, 2014. Silva, who had been assigned to the case since August 2013, testified that parents moved from Solano County to Sacramento County in early June 2014 to be closer to the children. The Department had provided referrals to parents in Sacramento and parents were following up with the referrals for counseling and had joined a support group. Silva also testified that father had maintained employment throughout the dependency. Parents had participated in individual counseling and in parent child interaction therapy (PCIT). Parents had completed only the first section of PCIT before their move to Yolo County and were awaiting Medi-Cal coverage so that they could avail themselves of services. Parents had consistently attended therapeutic visitation services.

Silva further testified that parents had denied E.S.'s allegations of sexual abuse. She, however, had discussed the development of a safety plan to ensure the children would be protected from abuse, and parents had expressed willingness to follow one, but the specifics of the plan had not yet been discussed. Silva opined that mother had substantially complied with addressing the issues that led to the removal of the children. She also opined that father was attentive during visits, had completed a parenting class,

was attending counseling and had incorporated his learning in interacting with the children during visits. She testified that there was a substantial probability that the children could be returned to parents within a few months.

In response to questions from the court, Silva testified that parents had not admitted that J.M. was shaken nor had they admitted not feeding him. Silva acknowledged that there was a possibility mother might be hesitant to report sexual abuse out of a fear that her children would be taken away. She did not believe that there was a substantial probability that T.M. could be returned home in two months.

The court continued the matter to August 1, 2014 to allow time for further briefing and argument. On August 7, 2014, the court terminated reunification services as to the four older children, finding that return of the children would create a substantial risk of detriment. The court found that parents had not addressed the physical abuse to J.M. or E.S.'s sexual abuse in therapy and had not "[come] to terms [with] what happened to prevent this from happening in the future." The court indicated that parents had initially been reluctant to address the abuse of J.M. because there was a pending criminal case, but parents had resolved that case by plea, admitting the physical abuse of J.M., but still had not faced the underlying facts of the abuse. The court ruled that it could not find that parents "made significant and consistent progress in resolving the problems when they won't come to grips with what really happened here." The court set the matter for a section 366.26 hearing on December 4, 2014.

The court proceeded to the jurisdiction/disposition hearing for T.M. The Department submitted the matter, arguing that based on the fact that reunification services were terminated as to the older children, the court could bypass services under section 361.5, subdivision (b)(10). The court sustained the section 300 petition as to T.M. and bypassed reunification services. The court found that T.M. was part of a sibling group and set the section 366.26 hearing for the same date as the older children.

II. DISCUSSION

Parents contend that the juvenile court erred in terminating reunification services because the services did not include those addressing the issues of the allegations of

J.M.'s head trauma and E.S.'s sexual abuse. We agree that the services provided were inadequate.

“In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the [Department]. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citations.] ‘If there is any substantial evidence to support the findings of the juvenile court, [we are] without power to weigh or evaluate the findings.’ [Citation.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361–1362.)

“The adequacy of reunification plans and the reasonableness of [the Department’s] efforts are judged according to the circumstances of each case.” (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 (*Amanda H.*)). Section 361.5, moreover, has been construed to require a good faith effort to provide reasonable services responding to the unique needs of each family. (*Ibid.*, *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472 (*Precious J.*)). “‘[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult’” (*Amanda H.*, *supra*, at p. 1345; quoting *In re Riva M.* (1991) 235 Cal.App.3d 403, 414, italics omitted.) “[S]ection 366.21, subdivision (g)(3), requires “clear and convincing evidence” that such services have been offered to the parents. Under this burden of proof, “evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind.” [Citation.]’ [Citation.]” (*Precious J.*, *supra*, at pp. 1472–1473.)

Here, the court found that the children were at substantial risk of detriment if returned to parents based on the fact that they had not addressed the physical abuse of J.M. nor the sexual abuse of E.S. in therapy. Yet while the reunification plans for parents included a counseling/mental health objective, it was not designed to address the

allegations of J.M.'s head trauma due to shaking or E.M.'s sexual abuse.⁵ The objective simply read that parents "will participate in therapeutic services as recommended by the assigned clinician/therapist to address issues surrounding: the family's current involvement with Child Welfare Services, [their] responsibility in the matter, grief and loss, and family conflict." There were no objectives in the case plan specifically requiring parents to acknowledge J.M.'s physical abuse and E.S.'s sexual abuse and to address the issues in therapy.

We recognize that, after the Department substantiated E.S.'s sexual abuse allegations, it amended parents' case plan to include an objective by which parents would "show that [they] will not permit others to sexually abuse [their] children."⁶ This objective required parents to read articles about sexual abuse and to discuss them with the social worker and develop a safety plan before moving to unsupervised visitation. Mother complied with this objective but father had not yet met with Silva to discuss the articles. The Department nonetheless recommended that reunification services be extended and that the parents transition to unsupervised visits. The Department envisioned parents continuing with therapeutic visitation and transitioning to unsupervised and overnight visits. The Department would develop a safety plan with parents along with ensuring parents had a support network in the community. In sum, Silva opined that the safety parameters could be in place by the 18-month review hearing and that the children could be returned to parents' care.

On cross-examination, Silva testified that parents had been reluctant to discuss the issues concerning J.M. and E.S. because they were facing criminal charges, and had not

⁵ At the time the plan was formulated in May 2013, the Department had not yet learned of E.S.'s allegations of sexual abuse.

⁶ The extent of the Department's investigation of the alleged abuse is unclear from the record before us. The record does not include a DVD or a transcript of the multi-disciplinary interview of E.S. conducted on July 26, 2013.

acknowledged that E.S. had been sexually abused. She had not had the opportunity to discuss the allegations with parents since the criminal matters had resolved.⁷

On this record, we cannot conclude that the Department proved by clear and convincing evidence that reasonable reunification services were offered. The Department failed to design a reunification plan which addressed the problems that had come to light during the dependency proceedings. Indeed, at the time it prepared its report for the 12-month review hearing, the Department opined that parents had made adequate progress in their reunification plan such that the children could be returned home once parents transitioned from supervised to unsupervised visitation, yet the court found that parents' failure to address the physical abuse of J.M. and the sexual abuse of E.S. in therapy precluded return of the children to their home. The reunification plan prepared by the Department did not have these specific objectives and parents completed all the therapy sessions that were required by the plan. The Department's failure to tailor the therapy provided to parents to address the specific problems of most concern to the court resulted in inadequate reunification services.

Amanda H. v. Superior Court, supra, 166 Cal.App.4th at pp. 1342–1343 is instructive. There, the mother received reunification services after her children were detained as a result of the mother's assault of the father in the children's presence. The reunification plan included individual counseling, anger management, parenting education, and domestic violence counseling. (*Id.* at p. 1343.) The social worker's report of the 12-month review hearing indicated that mother had discussed domestic violence in her individual counseling sessions but had not enrolled in a separate domestic violence course. (*Id.* at p. 1344.) The social worker did not learn that the mother had not enrolled in the domestic violence program until shortly before the 12-month review hearing. (*Id.* at p. 1344.) When the mother learned that there was a domestic violence requirement, she enrolled in a program and had attended two sessions by the time of the 12-month

⁷ Father was not charged with child sexual abuse. Parents entered a plea in a criminal case regarding the abuse of J.M.

review hearing. The social worker, however, recommended that the court terminate reunification services on the ground that mother had not enrolled in a separate domestic violence program, opining that she had not adequately addressed anger management and domestic violence issues. The court agreed and terminated services. (*Id.* at p. 1345.)

The mother petitioned for an extraordinary writ challenging the court's ruling. The court of appeal granted the writ, concluding that reasonable reunification services had not been provided. "While it was mother's responsibility to attend the programs and address her problems, it was the social worker's job to maintain adequate contact with the service providers and accurately to inform the juvenile court and mother of the sufficiency of the enrolled programs to meet the case plan's requirements." (*Amanda H.*, *supra*, 166 Cal.App.4th at p. 1347, see also *Precious J.*, *supra*, 42 Cal.App.4th at pp. 1478–1480 [reasonable reunification services not provided when the Department failed to facilitate visitation for incarcerated parent].)

Here, as well, parents were led to believe that they had substantially completed all of the requirements for reunification, and indeed, the Department's report for the 12-month review hearing reflected that parents were likely to reunify with the children once they were able to transition to unsupervised visitation. While we understand the court's hesitation to order return of the children to parents until they have addressed all of the issues that resulted in the children's removal, it was incumbent upon the Department to ensure that parents be apprised of all requirements for reunification—including acknowledgment of J.M.'s head trauma and E.M.'s sexual abuse—and that it give parents an opportunity to address those issues in therapy *before* the 12-month review hearing.⁸

III. DISPOSITION

The petitions are granted. The juvenile court is ordered to vacate its orders of August 7, 2014 terminating parents' reunification services and bypassing reunification services as to T.M. and setting a section 366.26 hearing, and to issue new orders

⁸ In light of our decision, we need not reach the other issues raised by the parties.

extending reunification services for parents. Our decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i) and 8.490(b).)

Rivera, J.

We concur:

Reardon, Acting P.J.

Bolanos, J.*

* Judge of the Superior Court of the City and County of San Francisco, assigned by the Chief Justice pursuant to Article VI, section 6 of the California Constitution.